

July 10, 2013  
Lilia Escobedo  
Cedars Sinai Medical Network Services

Hello,

I feel that the turn around time to appeal a claim is quite unreasonable. Three months is by far not giving us, the provider enough time to do the proper research to generate and appeal a claim back to the insurance. There is a lot of road blocks with Insurance carriers from sometimes trying to get an Explanation of review resent to you, or the offices at times stating they have no record of an appeal you sent. I feel a longer turn around time to appeal a claim would be best.

Thank you,

July 11, 2013  
Rod Olguin  
Administrative Certified Interpreter

Regarding petitions for costs can be filed only by:

- A qualified interpreter seeking payment for services other than those rendered at a medical treatment appointment or a medical-legal exam or deposition.

At a deposition you normally have two or more attorneys, a court reporter and the witness/claimant. How can this be considered a "medical-legal" setting is beyond me. We as interpreters should be able to file a Petition for Costs for the translation services that we provide at a Deposition if our fees are not paid. It would be bad faith by the defendants to retain our services for a deposition of a witness/claimant and not pay for our services. We should not have to wait for the case in chief to settle before we get paid for our services by filing a Lien. And you want us to pay \$150.00 to collect \$147.00? Really?

July 10, 2013  
Antonio Verdiny  
Certified Interpreter

If you pass this proposal, many of us certified interpreters will be ran out of business. Good luck on finding certified interpreters that are required for all Med Legal cases and then medical reports and depositions will be trashed as they will not be admisable in any court, this will cost the carriers more money as any one can and will object to any evidence brought in by interpretation by a non certified "interpreter".

July 11, 2013  
Olimpia Black  
Medical Certified Interpreter

I strongly oppose your proposed regulation as this would have devastating effect on us interpreters. The requirement that subject us to IMR is so unfair when you consider our bill may be only 2 or 3 hundred dollars. In essence you are saying we should work for free! What would be the point if pursuing payment when you have to incur an expense higher than your bill and the expense is not recoverable?

I ask of you to reconsider this change, to go forward would mean injured workers will have a very difficult time getting the help of an interpreter.

July 12, 2013  
Michael McClain  
California Workers' Compensation Institute

Mr. Sullivan:

Please find attached a letter from the California Workers' Compensation Institute requesting that the WCAB provide a 45-day comment period for the workers' compensation community to respond to the latest proposed changes on the Rules of Practice and Procedure.

If you have any questions, please do not hesitate to call me at (510) 251-9470 or via e-mail at [mmcclain@cwci.org](mailto:mmcclain@cwci.org)

Thank you for considering our request.



## California Workers' Compensation Institute

1111 Broadway Suite 2350, Oakland, CA 94607 • Tel: (510) 251-9470 • Fax: (510) 251-9485

July 12, 2013

VIA E-MAIL: WCABRules@dir.ca.gov

Neil P. Sullivan, Secretary & Deputy Commissioner  
Workers' Compensation Appeals Board  
P.O. Box 429459  
San Francisco CA 94142-9459  
ATTN: Annette Gabrielli, Regulations Coordinator

### **RE: Proposed Changes to WCAB -- Rules of Practice and Procedure**

Dear Mr. Sullivan:

In view of the extensive revisions to the proposed amendments to the Board's Rules of Practice and Procedure regarding lien litigation procedures, I am requesting that the WCAB provide a 45-day comment period for the workers' compensation community to respond.

Since the public hearing held in April, the WCAB has issued a very relevant en banc opinion in Martinez v. Terrazas (2013) 78 CCC 444 and then the current revisions issued on July 10<sup>th</sup>. The proposed revisions are fundamental and significant – both as to the proposed regulations and the Board's rationale.

In order to fully understand the rules setting out new and extensive procedures for litigating liens and the scope of Labor Code section 5811 costs, it is necessary for the workers' compensation community to have adequate time to review the proposals, give them careful consideration, and produce a thoughtful and thorough response. There are relevant issues that need to be addressed in addition to the proposed regulatory changes and the more comprehensive development of the record, the more efficient and effective the regulations should be.

With the Board's en banc opinion on this question in place, providing additional time to allow a comprehensive response from the community seems to be in the best interest of the workers' compensation system.

Thank you for your attention in this matter.

Sincerely,

Michael McClain  
General Counsel

MMc/pm

cc: Chairwoman Caplane  
Commissioner Brass  
Commissioner Lowe  
Commissioner Sweeney  
Commissioner Moresi

July 11, 2013  
Kenneth D. Martinson  
Abogado Gomez

read 4600f, lc 1171.5, govt code 11135, del taco, 5811, the California constitution. audit "vendor" interpreters to determine the aging of their accounts receivables versus private interpreting companies. audit "vendor" invoicing forms. many invoices document confidential medical information in violation of California constitution privacy protections.

July 11, 2013  
Carina Feldman  
State Court Certified Spanish Interpreter & Translator

Dear Mr Sullivan,

I am appalled to find out about the proposed modifications to WCAB rules.

We interpreters have a hard enough time already with the extremely adverse realities we face in our business: non-certified interpreters flooding our market who drive our rates down and take our jobs (thanks to the lack of enforcement of regulations on the use of certified interpreters, who work hard at getting certified and maintain their level of proficiency and professionalism), deadbeat clients and agencies that make it really hard for us to collect if they pay at all, and courtrooms closing and further sending more interpreters into an already over-saturated market, to name a few. To illustrate the point: I have not been able to raise my rates in 10 YEARS. I am charging now the same as I charged back in 2003 and I'm having a harder time now than I did then in finding work, let alone collecting for it.

We don't work on contingency like lawyers, and our earnings are considerably smaller than theirs. That's why we shouldn't work on a lien basis.

We already have a hard enough time trying to collect from clients and agencies as it is.

If on top of all this we are forced to wait 90 days to get paid and pay \$350 that we DO NOT GET BACK for filing any payment dispute, we will all be OUT OF BUSINESS.

This is a completely unfair measure that only benefits insurance carriers, as usual.

I urge you to do the right thing by hard-working interpreters that serve the community and oppose these proposed amendments to WCAB rules.

July 11, 2013  
(No name)

IF INTERPRETERS ARE NOT RESPECTED WHY SHOULD THEY RESPECT CASES THEY INTERPRET?

July 11, 2013  
Alina Castañeda  
State-Certified Medical Interpreter

TO WHOM IT MAY CONCERN:

I received news about the new regulations for interpreters. I strongly oppose them since these regulations are unreasonable and they put the independent interpreters and small agencies in an impossible position against the very big, very powerful insurance companies. It is already a tremendous struggle to be paid for our services, which are necessary for the injured workers who are not fluent in English and for their doctors. Ours is one of the few professions without support from the law and our services are necessary and very helpful to the Workers Compensation field.

Please reconsider and make the right modifications to this law, in order to give us a fair treatment and dignified payment system.

July 11, 2013  
Brenda Trujillo

Dear Sir or Madam,

In connection with the above referenced matter, in the event the regulations are approved by the DWC this WILL be financially devastating and will put all Independent Interpreters and LSP's out of business since they will be left with the burden of filing a \$150 fee for services that were reasonably and necessarily incurred and \$350 fee for IBR if there is a payment dispute. Not to mention that we will now have to wait 90 days for payment!

This is not fair and I completely oppose to this new regulations. Thank you for your consideration.

July 14, 2013  
Jon C Brissman  
Brissman & Associates

The WCAB is proposing that Rule 10301(h) should be modified to expressly state that "costs" include medical-legal expenses, so as to obviate any question about whether medical-legal expenses are subject to a claim of costs filed in the form of a lien.

The question is whether, after filing a lien and paying a filing or activation fee, a medical-legal provider must wait for resolution of the underlying claim before it can prosecute its lien, or may it then file a pre-resolution petition?

Certainly no problem arises when the case-in-chief has resolved, since medical-legal providers may then file a DOR to place the matter on calendar for resolution.

Note that SB863 revised the medical-legal dispute resolution procedures for services in 2013 and beyond: The provider must request a second review within 90 days of receipt of an EOR, then object again if the second review is unsatisfactory and either 1) start the IBR process if the amount payable is in dispute, or 2) await defendant's filing of a petition and DOR if liability is in dispute. However, SB863's remedies are not available for pre-2013 medical-legal providers.

Consider the plight of an Agreed Medical Examiner who receives no objection yet is not paid for services prior to 2013 and the case-in-chief is not resolved. Long-standing case law has held that valid medical-legal expenses need not wait for case-in-chief resolution before an order to pay may issue.

Labor Code § 4622 says, inter alia, "All Medical-legal expenses for which the employer is liable shall, upon receipt by the employer of all reports and documents required by the administrative director incident to the services, be paid . . ."

Labor Code § 4625(a) says, in pertinent part: "[A]ll charges for medical-legal expenses for which the employer is liable that are not in excess of those set forth in the official medical-legal fee schedule adopted pursuant to Section 5307.6 shall be paid promptly pursuant to Section 4622."

The quoted language of the statutes was not changed or amended by SB863; the law in 2004 remains identical in 2013. There is no requirement for the underlying claim to resolve before medical-legal charges are due and payable.

Observe that no AME intended to provide services on a lien basis; the expectation was that the charges would be reviewed and paid promptly. Unfortunately, AMEs regularly receive EORs that deny payment because "the claim is denied," or "MLI04 is not a valid CPT code," or "provider is not in employer's MPN," or "UR did not certify the services," or a dozen other inapplicable objections.

One might think that it is a rare circumstance when an AME is not promptly and properly paid. However, I represent several AMEs who collectively have hundred of liens, all billed exactly at medical-legal fee schedule rates, for pre-2013 services on cases which the underlying cases have not yet resolved. In the past I resolved many AME liens with pre-resolution petitions. Defendant is given an opportunity to object, upon which the WCJ may defer action until the underlying claim is at issue. But my experience is that defendants do not object, they make payment pursuant to the order, and that allows the provider to close the account.

Public policy would seem to disfavor requiring AMEs to wait, perhaps for years, before their liens can be addressed.

The WCAB should consider allowing an AME, after filing and/or activating a lien for pre-2013 services, to file a pre-resolution petition for payment. Perhaps Panel QMEs should also be afforded a post-lien-filing, pre-resolution remedy.

Jon C. Brissman  
BRISSMAN & ASSOCIATES  
(909) 512-9205

July 15, 2013  
Keith Migotti

To whom it may concern

I am flabbergasted that they would even propose some crazy overburden some proposal. The injured worker who doesn't speak English deserves the right to an interpreter. How come the insurance companies are not responsible for the cost of IBR? I feel that this proposal is discriminatory when our country is full of immigrants who work to make this country what it is. I hope that all the LSP's rally together to ensure that this is not put to order.

Concerned

July 15, 2013  
Daniel Saban Esq  
The Carlo Law Group

I would like to have my opposition noted to the Proposed Changes to Rules of Practice and Procedure that an Interpreter and or Language Service Provider (LSP) cannot file a Petition for Costs for the following services: Medical-Legals, Medical Treatment & Depo Related events.

I believe this to be overly burdensome and the goals of the change can be achieved in other ways. This proposed language will be financially devastating and will put all Independent Interpreters and LSP's out of business. The carriers have shown continually that they will use these proposed rules to add another cost to Independent Interpreters and LSP's even if there is no good faith dispute. The penalties for carriers is NOT sufficient to justify placing this burden on Independent Interpreters and LSP's.

Thank you for your consideration.

July 15, 2013  
Ana Smith  
California Certified Court Interpreter

Dear Mr. Sullivan,

My name is Ana B. Smith and I am a California Certified Court Interpreter. I would like to let you know of my opposition to the Proposed Changes to the California Code of Regulations, Title 8, Division 1 Chapter 4.5. Division of Workers' Compensation Subchapter 1.9. Rules of the Court Administrator and Subchapter 2. Workers' Compensation Appeals Board--Rules of Practice and Procedure. These proposed changes would have a devastating impact upon me and other professional interpreters throughout California.

The proposed changes would change the rules so that an Interpreter and or Language Service Provider (LSP) cannot file a Petition for Costs for the following services: Medical-Legals, Medical Treatment & Depo Related events. The proposed language states that those services can be sought through a claim of cost in the form of a lien. The only service that can be petitioned is for appearances at the WCAB. The proposed regulations also state that for those services that are to be filed as a lien will be subject to an IBR (Independent Bill Review) if there are any payment disputes which is a \$350 fee that I would not get back! It also states that the carrier now has 60 days to object and 90 days to pay and a demand for payment must be sent in writing before a DOR is filed.

In the event the regulations are approved by the DWC this seriously impede the ability of injured workers to be fairly represented. For interpreters, this will also be financially devastating and will put all Independent Interpreters and LSP's out of business. We will be left with the burden of filing a \$150 fee for services that were reasonably and necessarily incurred, and with a \$350 fee for IBR if there is a payment dispute. In addition, we would then have to wait 90 days for payment!

These changes would place an onerous burden upon me and my fellow professional interpreters. I am 100% for any changes which improve the system, but this proposal would disadvantage injured workers and those who work for them. I respectfully request that the Division of Workers' Compensation reject the proposed changes, and work towards implementing changes that are fair, judicious, and reasonable.

Thank you!

July 15, 2013  
Jeremy Merz  
Policy Advocate  
California Chamber of Commerce

Good afternoon Mr. Sullivan,

Please see attached comments regarding the comment period for the proposed changes to the Workers' Compensation Appeals Board's Rules of Practice and Procedure. Thank you for taking the time to review our concerns, and please let me know if you have any questions.

July 15, 2013

Neil P. Sullivan  
Assistant Secretary and Deputy Commissioner  
Workers' Compensation Appeals Board  
P.O. Box 429459  
San Francisco, CA 94142-9459  
WCABRules@dir.ca.gov

**RE: Workers' Compensation Appeals Board Proposed Changes to Rules of Practice and Procedure**

Dear Mr. Sullivan:


The undersigned organizations thank you for the opportunity you provided to give comments on the proposed changes to the Workers' Compensation Appeals Board's Rules of Practice and Procedure (Rules). Combined, our organizations represent tens of thousands of insured and self-insured public and private California employers, as well as companies that provide workers' compensation insurance coverage in the state.

While our organizations greatly appreciate your efforts to incorporate many public comments into the recently proposed changes to the Rules, we are concerned with the length of time given for feedback on the proposed changes. Our concern stems from the fact that the proposed changes are essentially a rewrite of sixty-five pages of new language, plus an additional twenty-eight pages of the statement of reasons. Fifteen days is simply not enough time to properly analyze these important revisions in their entirety – especially regarding topics that are of critical concern to the entire workers' compensation community.

We are currently in the process of conducting a thorough review of all proposed changes, but ask that you extend the deadline for comments in order to enable all stakeholders an opportunity to prepare the thoughtful and comprehensive feedback these critical Rules deserve.

If you have any questions, please feel free to contact Jason Schmelzer with the California Coalition on Workers' Compensation (916-441-4111) or Jeremy Merz with the California Chamber of Commerce (916-930-1227).

Sincerely,



Jason Schmelzer  
CCWC



Jeremy Merz  
CalChamber

cc. David Lanier, Chief Deputy Legislative Secretary, Office of Governor Edmund G. Brown  
Christine Baker, Director, Department of Industrial Relations  
Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation

July 15, 2013  
Manuel A. Ocaña  
Law Offices of Juan J Dominguez

I'm sending my opposition to the proposed changes that, if passed, will affect our clients that need interpreters because the interpreters will not be able to provide a needed service since they are not going to get paid.

The consequences of the changes will be devastating to the practicing community, including Judges. Most of the time, defendants want applicants to review the deposition transcript and to sign it under penalty of perjury and to that effect they usually request an stipulation from Applicant's attorneys. If my interpreter does not get paid for translating and reviewing the deposition transcript to my client, how are my clients going to be able to sign the transcript under penalty of perjury? They could easily attack the contents of the deposition booklet at a future time and move to strike it in its entirety.

July 17, 2013  
Luz M España CMI

My name is Luz M España CMI, I want to express my concern about the devastating consequences these new regulations will take on us freelancers as well as Language Service Providers, which literally will drive most of us out of business, for we work as a team, no LSP no work for interpreters.

Hopefully you will reconsider your decision and make more feasible for everybody to make a living.

Thanks

July 16, 2014  
Samuel Pinilla  
Conference Interpreter

Dear Mr. Sullivan,

My name is Samuel Pinilla and I am a California Certified Court Interpreter. I would like to let you know of my opposition to the Proposed Changes to the California Code of Regulations, Title 8, Division I Chapter 4.5. Division of Workers' Compensation Subchapter 1.9. Rules of the Court Administrator and Subchapter 2. Workers' Compensation Appeals Board--Rules of Practice and Procedure. These proposed changes would have a devastating impact upon me and other professional interpreters throughout California.

The proposed changes would change the rules so that an Interpreter and or Language Service Provider (LSP) cannot file a Petition for Costs for the following services: Medical-Legals, Medical Treatment & Depo-Related events. The proposed language states that payment for those services can be sought through a claim of cost in the form of a lien. The only payment that can be petitioned is for appearances at the WCAB. The proposed regulations also state that those services that are to be filed as a lien will be subject to an IBR (Independent Bill Review) if there are any payment disputes which is a \$350 fee that I would not get back! It also states that the carrier now has 60 days to object and 90 days to pay and a demand for payment must be sent in writing before a DOR is filed.

In the event the regulations are approved by the DWC this will seriously impede the ability of injured workers to be fairly represented. For interpreters, this will also be financially devastating and will put all Independent Interpreters and LSP's out of business. We will be left with the burden of filing a \$150 fee for services that were reasonably and necessarily incurred, and with a \$350 fee for IBR if there is a payment dispute. In addition, we would then have to wait 90 days for payment!

These changes would place an onerous burden upon me and my fellow professional interpreters. I am 100% for any changes which improve the system, but this proposal would disadvantage injured workers and those who work for them. I respectfully request that the Division of Workers' Compensation reject the proposed changes, and work towards implementing changes that are fair, judicious, and reasonable.

Thank you!

July 18, 2013  
Richard J Boggan JD  
Law Publisher, Work Comp Collections Newsletters

Holding all parties accountable for the time requirements and waivers for failure to object or comply with the mandatory time requirements has put fairness into SB 863 for all concerned and because of this SB 863 has a chance to achieve its objective.

**“Proposed Rule 10451.2(c)(1)(D) and (E)** address the situations where, based on an alleged breach of statutory or regulatory duties, either: (1) a medical treatment provider asserts that a defendant has waived any objection to the amount of its bill; or (2) a defendant asserts that a medical treatment provider has waived any claim to further payment. These provisions have been included because the law establishes that where a party has a duty to take a particular action to preserve a claim or defense, it must timely undertake that action and cannot bypass it; otherwise, the party waives that claim or defense.”

**Proposed Rule 10451.2(c)(1) (C)** an assertion by an employee or a medical treatment provider that IMR is not required because UR was not undertaken or not timely undertaken or was otherwise procedurally deficient; however, if the employee prevails in this assertion, the employee or provider still has the burden of showing entitlement to the recommended treatment;

The rules proposed by the WCAB, posted and open to public until July 25, 2013 has a ring of fairness to all parties concerned, holding insurance companies to the comparable standard that was and is expected of providers in the pursuit of collections for services provided to an injured worker. With the WCAB no nonsense and zero tolerance born in late 2012 and 2013 they may be able to pull it off.

What this means is that, if the insurance adjuster fails to object timely, or fails to perform utilization reviews timely or fails to comply with other time objection requirements the provider gets paid with limited burden of proof,, but they still have to prove their case in accordance with the 2012 En Banc decision of **Tito Torres v AIC Sandblasting; and Zurich North America Nov 15, 2012** Case No. ADJ909554 LAO (0824849) and ADJ1856854 (LAO 0837910) 77 Cal. Comp.Cases, slamming the door shut on any potential abuse that could be mirrored in prior 2012 collections.

In short if the WCAB upholds it's no mercy rule on all parties the system under SB 863 may work for all parties, holding all parties accountable.

July 19, 2013  
Mary Frances Johnson  
Certified Spanish Interpreter

Gentle People,

I work intermittently [3 or 4 times a month] as a CA State Certified Interpreter [Spanish-English] for WC med exams and legal interviews.

Every year I renew my State certification [costs \$100 plus new pix if required that year]. Every year I'm required by the IRS to file a Sched. C for this 'business'. [takes a lot of my time to do so, so that's more \$ invested!]

My jobs are assigned by various interpreting 'agencies', some local to CA, some nation-wide, and my reimbursement is very low, based on a 20 yr old WC rule which stated that interpreters should be paid a minimum of \$45.00 per hour for a 2 hr. minimum job.

Some agencies from Southern CA where Spanish-speaking interpreters abound seem to think a total reimbursement of \$45.00 for the whole job is sufficient. Ditto the new nation-wide Health provider agencies that are now trying to take over the language interpreting field [and send out people who are not CA State certified].

So if you start adding additional fees and costs to these interpreting 'agencies', what will they pay the interpreters they send out? Who will they end up sending as interpreters? How will they get the reimbursement they're owed by the person who ordered the interpreting service? The person who orders the job currently is usually the insurer, and they're ALWAYS trying to avoid payment. The payment model of WC insurers seems to be "Delay, delay, delay until the insured non-English speaking worker returns to his home country".

You will end up turning the job of language interpreter, [which requires the services of a highly educated person, not just any bilingual person] into the job of a peon. Under-educated persons will be used as interpreters and will create many problems in the WC field; using incorrect terminology [body-part names, medical terms, illness names, which all vary per Spanish-speaking country of use] will contaminate WC claims, and lead to more legal appeals and more costs for the WC system itself.

Granted that the new economy budget of the State of CA probably forced you to figure out what each WC process costs and then add these new fees in order to recoup your expenses, I doubt you have figured out and subtracted the extra costs you will incur by imposing these new high fees.

These new additional fees will not save you from the sequester budget, they will end up impeding the efficiency of WC services.

July 19, 2013  
Esmey Villacreses  
On Time Interpreting Inc

As a California state certified interpreter and agency owner, I hereby state my strong opposition to this regulation.

The \$150.00 filing fee is \$60.00 more than the \$90.00 that is commonly billed for a medical consult/treatment appointment. With this disparity in cost, the expenses would swallow any profit and would result in a net loss, effectively putting any independent interpreter or agency out of business.

I believe that this is the goal of this regulation, to put ALL interpreting services and interpreters out of business. It is obvious that the Insurance Companies have the ear of the Department otherwise, how could such a blatantly engineered plan be put into place to legally violate the rights of injured workers with impunity?

I can't see how any interpreter will survive this. There will be no more interpreters! I am outraged at the lack of concern on the department's behalf. How will the monolingual injured worker communicate with his physician or attorney if you pass this regulation?

I urge you to remove the lien filing fee portion from the proposed regulations and do what is right for the language service providers and in turn the injured worker.

Respectfully submitted,

Esmey Villacreses  
On Time Interpreting, Inc.